

PENNSYLVANIA SECURITIES ACT OF 1972 - OMNIBUS AMENDMENTS

Act of Jul. 4, 2002, P.L. 721, No. 108

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No. 2002-108

SB 893

AN ACT

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto," further providing for definitions, for exempt securities and transactions, for exemption proceedings, for registration by coordination, for general registration provisions, for denial, suspension, revocation and conditioning of registrations, for federally covered securities, for exemptions and for registration and notice filing procedures; providing for prearranged trading programs; further providing for time limitations on rights of actions, for right of the Pennsylvania Securities Commission to bring actions, for investigations and subpoenas and for criminal penalties; providing for return of sales compensation; further providing for administration, for fees, for assessments, for administrative files, for miscellaneous powers of commission, for hearings and judicial review, for regulations and forms and orders; and providing for burden of proof.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102(a), (d), (e) and (p) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, amended November 24, 1998 (P.L.829, No.109), are amended and the section is amended by adding subsections to read:

Section 102. Definitions.--When used in this act, the following definitions shall be applicable, unless the context otherwise requires:

(a) "Advertisement" means any [publicly disseminated, written or printed communication, including without limitation, communication by radio, television, or other public media] **communication[,]** used in connection with a sale or purchase or an offer to sell or purchase a security **which is publicly disseminated by means of print, radio, television, Internet or other media.**

\* \* \*

(d) "Bank" means [any bank, banking and trust company, savings bank, trust company or private bank, as defined in the Banking Code of 1965, act of November 30, 1965 (P.L.847), or any savings and loan association, as defined in the Savings Association Code of 1967, act of December 14, 1967 (P.L.746), or any successor statutes thereto, or any banking institution, trust company or savings and loan institution organized under the laws of the United States, or of any state, territory or the District of Columbia, or a receiver, conservator or other liquidating agent of any of the foregoing.] **a bank, savings**

bank, savings institution, savings and loan association, thrift institution, trust company or similar organization which is organized or chartered under the laws of a state or of the United States, is authorized to and receives deposits and is supervised and examined by an official or agency of a state or by the United States if its deposits are insured by the Federal Deposit Insurance Corporation or a successor authorized by Federal law.

(e) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(i) An agent;  
(ii) An issuer;  
(iii) A bank[, when effecting transactions for its own account or for the account of another under section 302(c);] **which meets the exceptions from the definition of "broker" under section 3(a)(4)(B) or (E) or the definition of "dealer" under section 3(a)(5)(B) or (C) of the Securities Exchange Act of 1934 ( 48 Stat. 881, 15 U.S.C. § 78 c(a)(4)(B) or (E) and 5(B) or (C));**

(iv) An executor, administrator, guardian, conservator or pledgee;

(v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors;

(vi) A person licensed as a real estate broker or agent under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, and whose transactions in securities are isolated transactions incidental to that business; or

(vii) Other persons not within the intent of this subsection whom the commission by regulation designates.

\* \* \*

(k.1) "Knowing and knowingly" as used in sections 511(a) and 512(a) shall have the same meaning as the term "knowingly" is defined in 18 Pa.C.S. § 302(b)(2) (relating to general requirements of culpability).

\* \* \*

(p) "Publish" means publicly to issue or circulate by newspaper, mail, radio, [or] television, **Internet or other media** or otherwise to disseminate to the public.

\* \* \*

(w) "Wilful and wilfully" mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) of the act, and notwithstanding any law or statute to the contrary, wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person's conduct violated the act is not required.

(2) For purposes of section 511 with respect to a wilful violation of section 401(a) of the act, wilful means that the person acted intentionally, knowingly, recklessly or negligently as those terms are defined in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

Section 2. Section 202(f) of the act, amended May 9, 1984 (P.L.235, No.52) and November 24, 1998 (P.L.829, No.109), is amended to read:

Section 202. Exempt Securities.--The following securities are exempted from sections 201 and 211:

\* \* \*

(f) Any security listed, or approved for listing upon notice of issuance, on the New York, American, or Philadelphia stock exchange [or any other securities exchange] or quoted on [any national quotation service designated by regulation of the commission and any security (except securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940) which satisfies the margin requirements of the Board of Governors of the Federal Reserve System under Regulation T and any supplement or any successor regulation thereto] **the National Market System of the Nasdaq Stock Market;** any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed, approved or quoted; and any warrant or right to purchase or subscribe to any of the foregoing.

\* \* \*

Section 3. Section 203(i.1) and (p) of the act, amended December 7, 1994 (P.L.869, No.126) and November 24, 1998 (P.L.829, No.109), are amended to read:

Section 203. Exempt Transactions.--The following transactions are exempted from sections 201 and 211:

\* \* \*

(i.1) Any sale of an equity security, except securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), if: (i) the securities are proposed to be registered under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e) [or exempted under Regulation A promulgated under section 3(b) thereof (15 U.S.C. § 77c(b))] and, in fact, become registered under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e) [or exempted from registration pursuant to Regulation A promulgated under section 3(b) of such act; (ii) a copy of any final prospectus or final offering circular utilized or proposed to be utilized in connection therewith is filed with the commission at the time the notice required by clause (viii) is filed; (iii) the applicable filing fee specified in section 602(b.1) is paid with respect to such offering]; (iv) the issuer of the security is a reporting company as defined in section 102(q); (v) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this act; (vi) the equity security is listed on a national securities exchange registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the [National Association of Securities Dealers Automated Quotation System] **National Market System or Small Cap Market of the Nasdaq Stock Market;** (vii) the issuer, at the time [it files the notice required in clause (viii) with the commission] **the registration statement becomes effective under section 5 of the Securities Act of 1933,** has not received an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern unless the securities being sold in reliance upon this subsection are the subject of an offering that is being underwritten on a firm commitment basis by a broker-dealer registered under section 301[; and (viii) the issuer has filed a notice with the commission in the form and manner which the commission, by regulation, may prescribe. As a condition of the continuing

effectiveness of this exemption, copies of any post-effective amendment or sticker to such prospectus or offering circular must be filed with the commission within two business days after the same is filed with the Securities and Exchange Commission]. An exemption under this section shall terminate upon the termination of the registration statement under section 5 [(15 U.S.C. § 77e) or the exemption from registration pursuant to Regulation A promulgated under section 3(b) (15 U.S.C. § 77c(b))] of the Securities Act of 1933. For purposes of this subsection, the commission, by regulation, may define the term "equity security."

\* \* \*

(p) Any offer or sale of an evidence of indebtedness of an issuer either: organized exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual; or organized as a chamber of commerce or trade or professional association if [there has been filed with the commission a notice identifying the security and the basis of its qualification under this exemption together with such further information as the commission may by regulation require, and if the commission does not by order disallow the exemption within ten days or such shorter period as it may permit. The security qualifies under this exemption if: (i) the issuer and any predecessor have not defaulted within the current fiscal year and the three preceding fiscal years in any fixed interest or principal obligation; (ii) the issuer complies with regulations of the commission with respect to trust indentures and the use of a prospectus; (iii) the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings, which mortgage or deed of trust is or will become a first lien at or prior to the issuance of such evidences of indebtedness, or provision satisfactory to the commission is made for escrowing the proceeds from their sale until such first lien is established, and the total amount of such securities does not exceed seventy-five per cent of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes; and (iv) any person who accepts an offer to purchase securities under this subsection has received a written notice of his right to withdraw his acceptance as provided by section 207(m)(2). This exemption shall not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization.] **all the following are met:**

**(1) The issuer files a notice with the commission in the form prescribed by the commission not later than five business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier. The notice filed with the commission shall be accompanied by a copy of a disclosure document and any offering literature to be used in connection with an offer or sale of securities under this section.**

**(2) The filing fee prescribed in section 602(b.1)(x) has been paid.**

(3) Each person who accepts an offer to purchase securities under this subsection has received a written notice of a right to withdraw an acceptance as provided in section 207(m)(2).

(4) The issuer and any predecessor of the issuer have not defaulted within the current fiscal year and the three preceding fiscal years with respect to any debt security previously sold by the issuer or its predecessor.

(5) The total amount of securities proposed to be offered under this subsection are secured by a mortgage or deed of trust upon the existing land and buildings owned by the issuer which mortgage or deed of trust is or will become a first lien at or prior to the issuance of the securities or there exists a provision satisfactory to the commission for escrowing of the proceeds from the sale of the securities until such first lien is established.

(6) The total amount of securities proposed to be offered under this subsection does not exceed as of the time the form required by this subsection is filed with the commission seventy-five per cent of the fair market value of the land and buildings to be included in the mortgage or deed of trust.

(7) No promoter of the issuer expects or intends to make a profit directly or indirectly from any business activity associated with the organization or operation of the issuer.

(8) The issuer complies with regulations of the commission with respect to trust indentures and the use of an offering document.

\* \* \*

Section 4. Section 204 of the act is amended to read:

Section 204. Exemption Proceedings.--(a) The commission may by regulation as to any type of security or transaction, or by order in a particular case, as to any security or transaction increase the number of purchasers or offerees permitted, or waive the conditions in either of sections 202 or 203.

(b) The commission may by order deny or revoke any exemption specified in section 202 or 203 with respect to a specific security or transaction. [No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commission may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commission shall promptly notify all interested parties that it has been entered and reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.] **The order shall be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).** No order under this section [may] **shall** operate retroactively. No person [may] **shall** be considered to have violated section 201 by reason of any offer or sale effected after the entry of an order under this section if he sustains

the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

[(c) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.]

Section 5. Section 205(c) of the act, amended November 24, 1998 (P.L.829, No.109), is amended to read:

Section 205. Registration by Coordination.--\* \* \*

(c) [(1) A registration statement filed under this section for the offering of securities by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, automatically becomes effective if (i) the Federal registration statement or notification is effective with the Securities and Exchange Commission; (ii) no stop order is in effect in this State and no proceeding is pending under section 208; (iii) the registration statement or a predecessor registration statement has been on file with the commission for at least five days; and (iv) the fee specified in section 602(b.1) has been paid.

(2) All other registration statements] **A registration statement or notification of any proposed sale** filed under this section automatically become effective at the moment the Federal registration statement or notification becomes effective if (i) no stop order is in effect in this State and no proceeding is pending under section 208; **and** (ii) the registration statement **or notification** has been on file with the commission for at least ten days[; and (iv) the offering is made within these limitations].

\* \* \*

Section 6. Section 207(j.1) and (l) of the act, amended December 18, 1990 (P.L.755, No.190) and November 24, 1998 (P.L.829, No.109), are amended to read:

Section 207. General Registration Provisions.--\* \* \*

(j.1) [Except for a registration by coordination for an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), a] **A** registration by coordination is effective for one year from its effective date. The effectiveness of a registration by coordination may be extended beyond the initial one-year effectiveness period in increments of one-year periods up to a maximum of three years from the initial effectiveness date, provided that the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution and the commission has been notified of such continued offering and the period thereof. [A registration by coordination for an open-end or closed-end investment company or face amount certificate company, as such persons are classified in the Investment Company Act of 1940, is effective for the period beginning with its effective date and ending sixty days after the registrant's fiscal year end for the year in which the filing under section 205 became effective. A registration by coordination for a unit investment trust, as such a person is classified in the Investment Company Act of 1940, is effective for the period beginning with its effective date in this State and ending one year after the date the registration statement for the same securities became effective

with the Securities and Exchange Commission.] A registration by qualification is effective for one year from its effective date. The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the commission. No registration statement is effective during the time a stop order is in effect under section 208. [The effectiveness of a registration statement filed by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, shall not be terminated as a result of a post-effective amendment seeking to register an additional amount of securities which becomes effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.).]

\* \* \*

(1) [(1) Except as provided in paragraph (2), a] **A** registration statement relating to any offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered in this State. The amendment becomes effective upon the payment of the required filing fee, **if any**, and when the commission so orders.

[(2) Amendments to a registration statement of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, so as to increase the specified amount of securities proposed to be offered in this State are effective upon filing with the commission provided that the aggregate fee specified in section 602(b.1) has been paid.]

\* \* \*

Section 7. Sections 208(c), 211(c) and (d), 302(c) and (e.1) and 303(a)(iii) and (iv) of the act, amended November 24, 1998 (P.L.829, No.109), are amended to read:

Section 208. Denial, Suspension, and Revocation of Registrations.--\* \* \*

(c) The commission may by order deny, postpone, suspend or revoke the effectiveness of a registration statement. [No order may be entered without prior notice to the applicant or registrant, opportunity for hearing and written findings of fact and conclusions of law, except that the commission may by order summarily deny, postpone, suspend or revoke the effectiveness of a registration statement pending final determination of any proceeding under this subsection. Upon the entry of the order, the commission shall promptly notify the applicant or registrant that it has been entered and the reasons therefor and that, within fifteen days after the receipt of a written request, the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to the applicant or registrant, may modify or vacate the order or make it permanent.] **The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission**

shall promptly provide the order to the applicant or registrant. The order shall contain findings of fact and conclusions of law and include a notice affording the applicant or registrant an opportunity for a hearing under section 607(a). No order shall operate retroactively. No person [may] shall be considered to have violated section 201 solely by reason of an order entered under this section for any offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

Section 211. Federally Covered Securities.--\* \* \*

(c) (1) The commission may issue a stop order suspending the offer or sale of a security described in subsection (a) or (b) upon finding that:

[(1)] (i) The order is necessary or appropriate in the public interest for protection of investors; and

[(2)] (ii) There is a failure to comply with any condition established under this section.

(2) A stop order under this section may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a). No person shall be considered to have violated section 201 solely by reason of an order entered under this section for an offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

[(d) Notwithstanding the provisions of subsections (a) and (b), for the period ending October 10, 1999, the commission may require the registration of a security described in subsection (a) or (b) pursuant to section 201 if the issuer has not paid the correct fee and, if applicable, the correct assessment and the nonpayment or underpayment of the fee or assessment has not been remedied by the commission receiving the amount due from the issuer within ten calendar days following receipt by the issuer of a written notice from the commission concerning the nonpayment or underpayment of the fee or assessment required by this section or section 602(b.1) or 602.1(a)(5).]

Section 302. Exemptions.--The following persons shall be exempted from the registration provisions of section 301:

\* \* \*

(c) [A bank not registered as a broker-dealer under this act executing orders for the purchase or sale of securities for the account of the purchaser or seller thereof.] A person who represents an issuer in effecting transactions in securities registered under section 205 or 206 who:

(1) Is a bona fide officer, director, partner or employee of the issuer or an individual occupying similar status or performing similar functions; and

(2) Does not receive any compensation, directly or indirectly, for effecting the transactions.

\* \* \*

[(e.1) Any person who represents an issuer in effecting transactions in securities registered under section 205 or 206 who:

(1) Is a bona fide officer, director, partner or employee of the issuer or an individual occupying similar status or performing similar functions; and



(2) Does not receive any compensation, directly or indirectly, for effecting the transactions.]

\* \* \*

Section 303. Registration and Notice Filing Procedure.--(a)

\* \* \*

(iii) A federally covered adviser shall file with the commission, prior to acting as a federally covered adviser in this State, a copy of such documents as have been filed with the Securities and Exchange Commission which the commission by regulation may require, together with the fee specified in section 602(d.1). This requirement shall not apply to a federally covered adviser that:

(A) Has [its principal] a place of business in this State and whose only clients in this State are investment advisers, federally covered advisers, broker-dealers or institutional investors;

(B) Does not have a place of business in this State and during the preceding twelve-month period has had not more than five clients who are residents of this State, exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors; or

(C) Meets the definition of any person described in section 102(j)(i) through (viii) [or (x) and (xi).], **(x) or (xi), except a federally covered adviser that is also a broker-dealer registered under section 301, that has an individual employed by or associated with such person who meets the definition of investment adviser representative in section 102(j.1)(ii).**

[(iv) Notwithstanding the provisions of clause (iii), until October 10, 1999, the commission may require the registration of a federally covered adviser under section 301 if the federally covered adviser has not paid the correct fee and the nonpayment or underpayment of the fee has not been remedied by the commission receiving the amount due within ten calendar days following receipt by the federally covered adviser of written notice from the commission concerning the nonpayment or underpayment of the fee required by this section and section 602(d.1).]

\* \* \*

Section 8. Section 305(a)(i) and (xiv) and (d) of the act, amended or added December 18, 1990 (P.L.755, No.190) and November 24, 1998 (P.L.829, No.190), are amended and the section is amended by adding a subsection and a clause to read:

Section 305. Denial, Suspension, Revocation and Conditioning of Registration.

(a) The commission may, by order, deny, suspend, revoke or condition any registration or may censure any registrant if it finds that such order is in the public interest and that such registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

(i) Has[, in any application for registration or in any report required to be filed with the commission under this act, or in any proceeding before the commission, wilfully made or caused to be made any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any such application, report or proceeding, any material fact which is required to be stated therein or necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or has wilfully failed to amend or supplement such an application, report or statement in a timely manner in

accordance with rules which may be adopted by the commission; or] **filed an application for registration or a document in connection with an application for registration which as of its effective date or, as of a date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact; or**

\* \* \*

(xiv) Is subject to any currently effective order or orders entered within the past five years [of any securities] **by any regulator of another country:**

(A) denying registration to[, ] or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, [associated person] **investment adviser representative**, futures commission merchant, commodity pool operator, commodity trading adviser or a person associated with a futures commission merchant, commodity pool operator or commodity trading adviser; or [is]

(B) **denying, revoking or suspending the person's legal authorization to engage in the business of banking or insurance; or**

(xv) Is subject to any currently effective order of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of another country suspending or expelling such person from membership in such exchange or self-regulatory association[.]; **or**

(xvi) Is subject to a currently effective order or orders entered within the past five years by a state insurance regulator or Federal or state banking regulator denying registration, articles of incorporation or association, certificate of organization or authorization to do business, charter or license, or revoking or suspending the registration, articles of incorporation or association, certificate of organization or authorization to do business, charter or license of such person to engage in the insurance, banking or other financial services industry, or finding that such person has engaged in fraudulent, unethical, dishonest or abusive practices in connection with any aspect of the business of insurance, banking or other financial services.

(a.1) The commission, by order, may deny the application of:

(i) an agent or investment adviser representative if the individual is obligated pursuant to an award of an arbitration panel to pay compensation to purchasers of securities and, as of the date the application is filed with the commission, has not paid the awarded compensation to the purchasers in full and within the time period specified by the arbitration panel; or

(ii) a broker-dealer or investment adviser if a promoter, director, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer or general partner (or person occupying a similar status or performing similar functions) of the applicant held a similar position with another broker-dealer, investment adviser or federally covered adviser which entity pursuant to an award of an arbitration panel is obligated to pay compensation to purchasers of securities and, as of the date the application is filed with the commission, has not paid the awarded compensation to the purchasers in full within the time period specified by the arbitration panel.

The commission may issue an order prospectively rescinding a denial order issued under this subsection if the person whose

application has been denied under this subsection provides credible evidence that the compensation awarded by the arbitration panel which was the basis for denial of the application under this subsection has been paid in full and in cash.

\* \* \*

(d) The commission may by order summarily deny, postpone or suspend an application [for] or registration pending final determination of any proceeding under this section. [Upon the entry of the order, the commission shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.] **The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the applicant or registrant and the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative. The order shall contain findings of fact and conclusions of law and include a notice affording the applicant or registrant an opportunity for a hearing in accordance with section 607(a).**

\* \* \*

Section 9. The act is amended by adding a section to read:

**Section 410. Prearranged Trading Programs.--In connection with the offer, sale or purchase of any security in this State, no person shall be deemed to have violated section 401 or 406 or otherwise to have made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading if such person demonstrates that the offer, sale or purchase was prearranged in accordance with 17 CFR § 240.10b5-1(c) (relating to trading "on the basis of" material nonpublic information in insider trading cases), or any successor thereto, promulgated under section 10(b) of the Securities Exchange Act of 1934 ( 48 Stat. 881, 15 U.S.C. § 78 a et seq.).**

Section 10. Section 504(d) of the act is amended to read:

Section 504. Time Limitations on Rights of Action.--\* \* \*

(d) No purchaser may commence an action under section 501, 502 or 503 if, before suit is commenced, the purchaser has received a written offer: (i) stating the respect in which liability under such section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 501(a); and (ii) stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the commission may by rule prescribe; and the purchaser has

failed to accept such offer in writing within the specified period. **The limitations on a purchaser commencing an action under this subsection shall not apply if the purchaser has accepted an offer to repurchase made under this subsection within the time period specified under this subsection and has complied with all the terms of this subsection but has not received the cash payment specified by this subsection within ninety days of the date of acceptance of the offer to repurchase.**

\* \* \*

Section 11. Section 509(c) of the act, amended November 24, 1998 (P.L.829, No.109), is amended to read:

Section 509. Right of Commission to Bring Actions for Injunction and Equitable Relief; Class Actions; Contempt of Commission Orders.--\* \* \*

(c) Any person violating any (i) stop order issued under section 208, (ii) cease advertising order issued under section 606(c), (iii) cease and desist order issued under section 606(c.1), (iv) order of the commission requiring a rescission pursuant to section 513 [or], (v) order of the commission imposing any bar described in section 512, **(vi) order of the commission requiring return of sales compensation under section 514(a) or (vii) any order of the commission imposing an administrative assessment under section 602.1(b) or (c)** from which no appeal of such an order has been taken pursuant to section 607(d) of the act or which has been sustained on appeal, or which has been appealed but where no supersedeas has been granted for the period [in] **during** which the order has been violated, shall be deemed to be in contempt of such order. Upon petition and certification of such order by the commission, the Commonwealth Court or any of the courts of common pleas if it finds after hearing or otherwise that the person is not in compliance with the order shall adjudge the person in contempt of the order and shall assess such civil penalties of an amount not less than [three] **five** thousand dollars [(\$3,000)] **(\$5,000)** nor greater than [ten] **fifteen** thousand dollars [(\$10,000)] **(\$15,000)** per violation and [issue such further orders] **grant such equitable relief** as it may deem appropriate.

Section 12. Section 510 of the act is amended by adding a subsection to read:

Section 510. Investigations and Subpoenas.--\* \* \*

(e) **At the request of the securities regulatory authority of another jurisdiction, the commission may provide assistance if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether a person has violated, is violating or is about to violate laws or rules relating to securities matters that the requesting authority administers or enforces. The commission may, in its sole discretion, conduct such investigation and use the powers conferred under this section as the commission deems necessary to collect information and evidence pertinent to the request for assistance. The assistance may be provided without regard to whether the facts stated in the request would constitute a violation of this act or the laws of this Commonwealth. In deciding whether to provide such assistance, the commission shall consider whether:**

(i) **the requesting authority is permitted and has agreed to provide reciprocal assistance in securities matters to the commission; and**

(ii) **compliance with the request would prejudice the public interest.**

Section 13. Section 511(b) of the act, amended November 24, 1998 (P.L.829, No.109), is amended to read:

Section 511. Criminal Penalties.--\* \* \*

(b) A person who wilfully violates section 401, 408 or 409 commits a felony of the third degree and may be fined not more than [ten thousand dollars (\$10,000)] **twenty thousand dollars (\$20,000)** if none of the victims of the person's violative conduct were individuals aged [65] **60** or more and not more than [fifty thousand dollars (\$50,000)] **one hundred thousand dollars (\$100,000)** if any of the victims of the person's violative conduct were individuals aged [65] **60** or more or imprisoned for not more than seven years, or both. In addition to fine or imprisonment, or both, the person may be sentenced to make restitution.

\* \* \*

Section 14. The act is amended by adding a section to read:

**Section 514. Return of Sales Compensation.--(a) After giving notice and opportunity for hearing, the commission, where it has determined that a person who represented an issuer in effecting transactions in securities in this Commonwealth while in willful violation of section 301(a) and received compensation in connection with these transactions, may issue an order, accompanied by written findings of fact and conclusions of law, which requires the person to return to purchasers of securities in this Commonwealth, in cash, the amount of compensation received for effecting those securities transactions.**

(b) No order shall be issued under this section if the transactions in securities meet any of the following criteria:

(1) The transactions involved securities which were the subject of an effective registration statement filed with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.).

(2) The transactions involved securities which are exempted securities under section 3(a) of the Securities Act of 1933 except section 3(a)(4) and (11).

(3) The transactions are exempt from registration under section 5 of the Securities Act of 1933 pursuant to section 4 thereof except a transaction for which the issuer is relying on any rule or regulation promulgated by the United States Securities and Exchange Commission under section 4(2) of the Securities Act of 1933.

(c) The commission may issue more than one order under this section against the same person involving the same security.

(d) An order issued under this section shall not be deemed conclusive as to the total number of purchasers in this Commonwealth of any particular security or the total dollar amount of sales compensation received by a person for transactions effected in a particular security with purchasers in this Commonwealth for which liability may be imposed under subsection (a).

Section 15. Section 601(c) of the act is amended and the section is amended by adding a subsection to read:

Section 601. Administration.--\* \* \*

(c) It is unlawful for the commission or any of its officers or employees to use for personal benefit any information which is filed with or obtained by the commission and which is not generally available to the public. Nothing in this act authorizes the commission or any of its officers or employees to disclose such confidential information except among themselves or to other securities administrators, regulatory

authorities or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this act or any other law of this State. [No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commission or any of its officers or employees.]

(c.1) Except for the privileges created in this subsection, no provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commission or any of its officers or employees.

(1) The documents described in clause (2) and any testimony sought concerning information in those documents are privileged from disclosure under a subpoena directed to the commission or any of its officers or employees if the documents relate to:

(i) An investigation authorized under section 510 which has not been closed.

(ii) An action in which neither the commission nor any of its officers or employees is a party.

(2) The documents which are the subject of the privilege created in clause (1) include:

(i) Documents relating to an investigation conducted under section 510, including, but not limited to, statements made or taken in accordance with section 510(a) or (b) and documents in possession of the commission under section 510(a)(ii).

(ii) Documents received in connection with a subpoena issued under section 510.

(iii) Documents relating to an examination conducted under section 304(d).

(iv) Documents obtained from a securities administrator, regulatory authority or law enforcement or governmental agency relating to an investigation authorized under section 510 or an examination conducted in accordance with section 304(d).

(v) Documents deemed confidential by order of the commission under section 603(c).

(3) Complaints filed with the commission and testimony concerning information in the complaints are privileged absolutely from disclosure under a subpoena directed to the commission or its officers or employees.

(4) No privilege is created under clause (1) or (3) if document sought under a subpoena directed to the commission or its officers or employees is otherwise publicly available.

\* \* \*

Section 16. Section 602(b.1)(i) and (v) of the act, amended or added December 18, 1990 (P.L.755, No.190) and December 7, 1994 (P.L.869, No.126), are amended to read:

Section 602. Fees.--\* \* \*

(b.1) Filing fees for sales of securities:

[(i) Exemption filings under section 203(i).. \$250]

\* \* \*

(v) Exemption filings under section 203(o) [(ii)] shall be:..... 250

\* \* \*

Section 17. Sections 602.1(a)(1) and (2), (c)(1), 603 and 606 of the act, amended November 24, 1998 (P.L.829, No.109), are amended to read:

Section 602.1. Assessments.--(a) (1) Each agent and investment adviser representative, when applying for an initial license under section 301 or changing employers, shall pay a compliance assessment in accordance with the following schedule: [twenty-seven dollars (\$27) for the period July 1, 1995, through

June 30, 1998, thirty dollars (\$30) for the period July 1, 1998, through June 30, 2001,] thirty-two dollars (\$32) for the period July 1, 2001, through June 30, 2004, [and] thirty-five dollars (\$35) **for the period July 1, 2004, through June 30, 2007, thirty-seven dollars (\$37) for the period July 1, 2007, through June 30, 2010, and forty dollars (\$40) thereafter.**

(2) Each agent and investment adviser representative, when applying for a renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: [twelve dollars (\$12) for the period July 1, 1995, through June 30, 1998, fifteen dollars (\$15) for the period July 1, 1998, through June 30, 2001,] seventeen dollars (\$17) for the period July 1, 2001, through June 30, 2004, [and] twenty (\$20) **for the period July 1, 2004, through June 30, 2007, twenty-two dollars (\$22) for the period July 1, 2007, through June 30, 2010, and twenty-five (\$25) thereafter.**

\* \* \*

(c) After giving notice and opportunity for a hearing, the commission may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in the amounts provided in paragraph (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the commission determines that the person willfully has violated this act or a rule or order of the commission under this act or has engaged in dishonest or unethical practices in the securities business; has taken unfair advantage of a customer; or has failed reasonably to supervise its agents or employees or against any other person if the commission determines that the person wilfully violated section [401(a) or (c), 406, 408, 409 or 512(d); section 401(b) or 407;] **301, 401, 404, 406 through 409 or 512(d)** or a cease and desist order issued by the commission under section 606(c.1).

(1) The commission, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(i) In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the commission may impose an administrative assessment of up to [twenty-five thousand dollars (\$25,000)] **fifty thousand dollars (\$50,000)** for a single violation or up to [two hundred fifty thousand dollars (\$250,000)] **five hundred thousand dollars (\$500,000)** for multiple violations in a single proceeding or a series of related proceedings. If any of the victims of the person's violative conduct were individuals aged [65] **60** or more, the commission also may impose a special administrative assessment in addition to the foregoing amounts of up to [twenty-five thousand dollars (\$25,000)] **fifty thousand dollars (\$50,000)**.

(ii) In issuing an order against a person for wilful violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d) or for wilful violation of a cease and desist order issued under section 606(c.1), the commission may impose an administrative assessment of up to [twenty-five thousand dollars (\$25,000)] **fifty thousand dollars (\$50,000)** for a single violation or up to [one hundred fifty thousand dollars (\$150,000)] **three hundred thousand dollars (\$300,000)** for multiple violations in a single

proceeding or a series of related proceedings. In addition to the foregoing assessment, the commission also may impose a special administrative assessment of up to [twenty-five thousand dollars (\$25,000)] **fifty thousand dollars (\$50,000)** for each of the provisions described as follows that the commission determines are applicable:

(A) The person, within seven years [of] **prior to** the commission taking action under this subsection [has been], **was** the subject of: a criminal felony conviction[,]; an injunction issued by any court of competent jurisdiction; or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities [administrator], **banking or insurance regulator** of another state, **a Federal banking regulator** or the securities, **banking or insurance** regulatory authority of another country which found that the person wilfully had violated any provision of the Federal or state securities, **banking, insurance**, or commodities laws or the securities, commodities, **insurance** or banking laws of another country[, provided that the foregoing convictions occurred or the injunctions or orders were entered prior to the violation for which this special administrative assessment is being imposed].

(B) The person's violative conduct involved individuals aged [65] **60** or more.

(C) The person's violative conduct involved **use of the Internet or** boiler room tactics which included, without limitation, use of any high-pressure sales tactics designed to create an artificially short time period for which the person being solicited is pressured to make an investment decision or overcome the person's reluctance to commit to the investment being offered, use of scripts designed to allay any objections or concerns expressed by the person being solicited or making repeated telephone calls **or sending multiple e-mail messages** to the same person pressuring the person to make an immediate investment decision.

(iii) In issuing an order against [persons] **a person** for wilful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to twenty-five thousand dollars (\$25,000) for each of the criteria described in subclause (ii) (A) and (C) that the commission determines are applicable. No assessment shall be imposed under this subclause if the person is subject to an administrative assessment imposed under any other provision of this subsection.

(iv) In issuing an order against a person, other than a federally covered adviser, for wilful violation of section 301, the commission may impose the following administrative assessments unless the person is subject to an administrative assessment imposed under any other provision of this subsection or the public proceeding to which the assessment relates was instituted prior to the date of enactment of this subclause:

(A) For a person who at the time of the wilful violation was not registered under section 301, was not registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and was not a member of a national securities association registered under that act, the commission may impose an administrative assessment of up to fifty thousand dollars (\$50,000) for a single violation or up to two hundred fifty thousand dollars (\$250,000) for multiple violations in a single proceeding or series of related proceedings.

(B) For a person (not an individual) that at the time of the wilful violation was not registered under section 301 but



was registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and was a member of a national securities association registered under that act, the commission may impose an administrative assessment of up to fifty thousand dollars (\$50,000) for a single violation or up to three hundred thousand dollars (\$300,000) for multiple violations in a single proceeding or series of related proceedings. An assessment imposed under this subclause shall be in addition to any liability a person may have under an order issued under section 514.

(v) In issuing an order for wilful violation of section 301(c.1)(1)(ii) against a person that is a federally covered adviser, the commission may impose the following administrative assessments:

(A) Up to one hundred thousand dollars (\$100,000) if the number of investment adviser representatives involved in the violation was less than five.

(B) Up to two hundred thousand dollars (\$200,000) if the number of investment adviser representatives involved in the violation was five or more.

(vi) In issuing an order for a wilful violation of section 301(f) against a person that is a federally covered adviser, the commission may impose an administrative assessment of two thousand dollars (\$2,000).

\* \* \*

Section 603. Administrative Files.--(a) A document is filed when it is received by the commission or by any other person which the commission by regulation **or order** may designate.

(b) The commission shall keep a register of all registrants, registration statements and notice filings which are or have ever been effective under this act [and predecessor laws] and all denial, suspension or revocation orders which have been entered under this act [and predecessor laws]. The register shall be open for public inspection [except with respect to summary suspensions under sections 208(c) and 305(d)].

(c) The information contained in or filed with any registration statement, application, notice filing or report shall be made available to the public in accordance with regulations prescribed by the commission; [provided that, upon proper showing of the registrant or issuer, the commission shall treat certain filings as confidential.] **except that the commission may make the following orders or regulations:**

(1) Upon proper showing of the registrant or issuer, the commission may order certain filings or parts of filings nonpublic.

(2) The commission, by rule or order, may deem certain categories of information filed with the commission as nonpublic.

(d) The commission upon request shall furnish to any person, at a reasonable charge, [photostatic or other copies, certified under seal of the commission if certification is requested, of any entry in the register or any order or other document made available to the public under subsection (c) above.] **a copy of any document described in subsection (c) in any medium available to the commission. Upon request and payment of a reasonable charge, the document may be certified under the seal of the commission.**

(e) The commission, by order, may subsequently make public information contained in the documents described in subsection (c)(1) and (2), and the order may limit the amount of information made public or place conditions on its use. Prior

to issuing an order under this subsection, the commission shall notify in writing the person who originally requested confidentiality at the person's last known address in the commission's files at least thirty days before the commission may issue an order under this subsection.

Section 606. Miscellaneous Powers of Commission.--(a) The commission may, by regulation, require any issuer of securities registered under this act or exempted from registration under section 203(d) **or (p)**, which issuer has not filed reports with the Securities and Exchange Commission pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m or 78o(d)), to distribute financial information to its security holders at least annually.

(b) If, in its opinion, the public interest and the protection of investors[,] so require, the commission may apply to a court of competent jurisdiction for an order[,] suspending all trading in this [State] **Commonwealth** by broker-dealers and agents in any security for any period.

(c) No person shall publish in this State any advertisement concerning any security (other than advertisements relating to federally covered securities, tombstone advertisements permitted under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) and the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) and the rules and regulations promulgated thereunder) except in accordance with such rules as the commission may promulgate from time to time. No person shall publish any advertisement concerning any security in this State after the commission **issues a cease advertising order in which it** finds that the advertisement [contains any statement that is false or misleading in any material respect or omits to make any] **contained an untrue statement of a material fact or omitted to state a** material [statement] **fact** necessary in order to make the statements made, in the light of the circumstances under which they [are] **were** made, not misleading [and so notifies the person in writing. Such notification may be given]. **The order may be issued** summarily without notice or hearing. [Within thirty days after the receipt of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within thirty days after such receipt unless the person making the request consents to a later date. After such hearing, the commission shall determine whether to affirm and continue or to rescind such order.] **Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).**

(c.1) Whenever the commission finds that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order thereunder, the commission may order such person to cease and desist from such act or practice. [and shall notify the person in writing. Notification may be given summarily without notice or hearing. Within thirty days after receipt of a notification under this section, the person desiring to engage in such act or practice may file a written request that the order be rescinded. Upon receipt of the written request, the matter will be set down for a hearing to commence within thirty days after such receipt unless the person making the request

consents to a later date. After such hearing, the commission shall determine whether to affirm and continue, modify or rescind such order.] **The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).**

(d) The commission may, by regulation, delegate any powers specified in this act to be exercised by the commission to members of the commission's staff, except for powers related to hearings.

Section 18. Section 607 of the act is amended to read:

Section 607. Hearings and Judicial Review.--(a) Within thirty days after [any order has become effective without a hearing, any interested party may apply to] **receipt of a summary order issued under section 204(b), 208(c), 211(c), 305(d), 606(c) or 606(c.1), the person against whom the order was issued and entered may file with the commission a written request** for a hearing in respect to any matters determined by the order.[, and a hearing shall be held within thirty days after the application is filed. After the hearing the commission may modify the order as it deems appropriate.] **Upon receipt of the written request, the matter shall be set down for a hearing to commence within thirty days after receipt of the request unless the person making the request consents to a later date. If the person making the request consents to a later date for the hearing but fails, after notification by first class mail to the person's last known address in the commission's files, to consent to a hearing date that is within one hundred eighty days of the date the written request for a hearing was filed with the commission under this subsection, the request for hearing shall be deemed abandoned, and the summary order shall be deemed a final order. After hearing, the commission may determine to rescind, modify or vacate the summary order or make it a final order. If no hearing is requested or a request for a hearing is filed untimely, the summary order shall be deemed to be a final order.**

(b) Within thirty days after [any order has become effective after a hearing, any interested party] **receipt of an order issued and entered by the commission after a hearing, the person against whom the order was issued and entered may apply to the commission for a rehearing. The commission, in its sole discretion, may grant the application and hold a rehearing. [if in its judgment sufficient reasons therefor appear. After rehearing, the commission may vacate or modify the order, and any order vacating the original order shall have the same effect as an original order. Failure to grant an application for rehearing within thirty days from the date of the filing shall constitute a denial; and failure, within fifteen days after the conclusion of a rehearing, to issue an order affirming, vacating or modifying the original order shall constitute an affirmation of the original order.] Failure of the commission to grant a rehearing within thirty days of receipt of an application shall constitute a denial. After rehearing, the commission may issue an order affirming, vacating or modifying the original order.**

(c) [Disciplinary hearings] **Hearings** and rehearings shall be public. [unless the commission grants a request joined in by all parties that the hearing be conducted privately. Investigatory hearings shall not be open to members of the

general public unless all parties to the hearing agree otherwise.]

(d) Orders of the commission shall be subject to judicial review in accordance with law, but orders originally entered without a hearing may be reviewed only if the party seeking review has [requested] **filed a request for** a hearing within the time provided [by] **under** subsection (a). **Filing for judicial review of a commission order shall not operate as a stay of the commission's order unless specifically ordered by the court.**

Section 19. Section 609(f) of the act, amended November 24, 1998 (P.L.829, No.109), is amended to read:

Section 609. Regulations, Forms and Orders.--\* \* \*

(f) **(1)** An application for registration of securities [or registration of a broker-dealer, agent, investment adviser or investment adviser representative] shall be deemed abandoned if the application has been on file with the commission for a minimum of twelve consecutive months and the applicant has failed to respond to the commission's notice [of warning] of abandonment **sent by first class mail to the applicant's last known address in the commission's files** within sixty calendar days [of the date of the warning.] **after the date the notification was mailed by the commission.** There shall be no refund of any fees [or assessments] paid by the applicant.

**(2)** An application for registration as a broker-dealer, agent, investment advisor or investment adviser representative shall be deemed abandoned if the application has been on file with the commission for a minimum of six consecutive months and the applicant has failed to respond to the commission's notice of abandonment sent by first class mail to the applicant's last known address in the commission's files within sixty calendar days after the date the notification was mailed by the commission. There shall be no refund of any fees or assessments paid by the applicant.

Section 20. The act is amended by adding a section to read:

**Section 612. Burden of Proof.--(a)** In a civil action or administrative proceeding under this act, a person claiming status as a federally covered security or adviser or an exemption, exception or exclusion from a definition has the burden of proving the availability of the status, exemption, exception or exclusion.

**(b)** In a proceeding for a criminal violation of this act, a person claiming status as a federally covered security adviser or an exemption, exception or exclusion from a definition has the burden of going forward with evidence of the claim, exemption, exception or exclusion.

Section 21. Section 704 of the act is repealed.

Section 22. This act shall take effect in 60 days.

APPROVED--The 4th day of July, A. D. 2002.

MARK S. SCHWEIKER